

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROBERT RAY ROY,

Defendant-Appellee.

UNPUBLISHED

January 25, 2011

No. 293857

Oakland Circuit Court

LC No. 2009-227267-FH

Before: O'CONNELL, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order denying its motion for reimbursement of costs of prosecution in the requested amount of \$460. We affirm.

On June 16, 2009, defendant was charged with operating a motor vehicle while intoxicated, third offense, MCL 257.625, and operating a motor vehicle in violation of a license restriction, MCL 257.312. Defendant was represented by court-appointed counsel. On June 19, 2009, defendant waived a preliminary examination, and an arraignment was scheduled for June 30, 2009, in circuit court. On that date, defendant pleaded guilty as charged. On August 11, 2009, the trial court sentenced defendant to 18 months' probation with 30 days to be served in jail and ordered defendant to pay a \$60 crime victim's fee, a probation supervision fee of \$720 to be paid at the rate of \$40 a month, \$450 in court costs, a \$500 fine, appointed defense attorney fees in an amount to be determined, and \$121 in state costs. The court denied plaintiff's request for reimbursement of costs of prosecution in the amount of \$460 as a condition of probation.

On appeal, plaintiff argues the trial court abused its discretion in denying its motion for reimbursement of the costs of prosecution. We disagree. A trial court may require a convicted defendant to pay costs only to the extent authorized by statute. *People v Nance*, 214 Mich App 257, 258-259; 542 NW2d 358 (1995). When authorized, costs of prosecution "must bear some reasonable relation to the expenses actually incurred in the prosecution." *People v Wallace*, 245 Mich 310, 314; 222 NW 698 (1929).

In this case, plaintiff relied on MCL 771.3(2)(c), MCL 769.1k, and MCL 769.34(6) in support of its motion for reimbursement of the costs of prosecution. These statutes provide a trial court with discretion to impose certain specified costs and expenses against a defendant. A court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes, *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008), or involves an error

of law, *People v Giovanni*, 271 Mich App 409, 417; 722 NW2d 237 (2006). This Court reviews questions involving the interpretation or application of a statute de novo as questions of law. *People v Martin*, 271 Mich App 280, 286-287; 721 NW2d 815 (2006).

MCL 771.3 provides, in pertinent part:

(2) As a condition of probation, the court may require the probationer to do 1 or more of the following:

* * *

(c) Pay costs pursuant to subsection (5).

* * *

(5) If the court requires the probationer to pay costs under subsection (2), the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer.

MCL 769.1k(1) provides, in pertinent part:

If a defendant enters a plea of guilty . . ., both of the following apply at the time of the sentencing or at the time entry of judgment of guilt is deferred pursuant to statute or sentencing is delayed pursuant to statute:

(a) The court shall impose the minimum state costs as set forth in section 1j of this chapter.

(b) The court may impose any or all of the following:

(i) Any fine.

(ii) Any cost in addition to the minimum state cost set forth in subdivision (a).

Lastly, MCL 769.34(6) provides:

As part of the sentence, the court may also order the defendant to pay any combination of a fine, costs, or applicable assessments. The court shall order payment of restitution as provided by law.

In this case, the trial court in essence determined that plaintiff's motion requesting reimbursement of costs of prosecution was overbroad and imprecise. The court stated, "'costs of prosecution' could presumably include the salary of any and all prosecution personnel . . . i.e., the costs of investigation, the person typing the complaint and warrant" The court was within its discretion in concluding that plaintiff failed to establish a reasonable relation to

expenses actually incurred in the prosecution of this defendant as required by *Wallace*, 245 Mich at 314.

Contrary to plaintiff's argument on appeal, *People v Brown*, 279 Mich App 116; 755 NW2d 664 (2008), does not undermine the trial court's discretion in this case. In *Brown*, this Court upheld an order requiring the offender to pay a specific amount of the prosecution's expert witness fees under MCL 771.3. The Court noted that the expenses were specifically incurred in prosecuting the defendant. *Id.* at 139. Here, the record does not indicate that plaintiff specified the relationship between the expenses of prosecuting defendant and the costs as requested in the motion. Accordingly, the trial court was within its discretion to deny plaintiff's motion.

Affirmed.

/s/ Peter D. O'Connell
/s/ Henry William Saad
/s/ Jane M. Beckering